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S.C. No. _____

SUPREME COURT OF YUKON

Between

FIRST NATION OF NA-CHO NYÄK DUN

SUPREME COURT OF YUKON
COUR SUPREME DU YUKON

DEC 09 2025

FILED / DEPOSÉ

Plaintiff

and

**GOVERNMENT OF YUKON AND
THE ATTORNEY GENERAL OF CANADA**

Defendants

STATEMENT OF CLAIM

Name and address of each plaintiff

First Nation of Na-Cho Nyäk Dun
PO Box 220
Mayo, YT Y0B 1M0

Name and address of each defendant

Government of Yukon
Department of Justice
Legal Services Branch
2134 Second Avenue
Whitehorse, YT Y1A 5H6

Attorney General of Canada
Deputy Attorney General of Canada
c/o Regional Director General
Northern Regional Office – Yukon
Department of Justice Canada
310 - 300 Main Street
Whitehorse, Yukon Y1A 2B5

TAKE NOTICE that this action has been commenced against you by the plaintiff for the claims set out in this Statement of Claim.

IF YOU INTEND TO DEFEND this action, or if you have a counterclaim, YOU MUST

- (a) GIVE NOTICE of your intention by filing an APPEARANCE in Form 9 in the registry of this court, at the address shown below, within the time for appearance provided for below and YOU MUST ALSO DELIVER a filed copy of the Appearance to the plaintiff's address for delivery, which is set out in this Statement of Claim, and
- (b) FILE A STATEMENT OF DEFENCE in Form 10 in the registry of this court within the time for defence provided for below and DELIVER a filed copy of the Statement of Defence to the plaintiff's address for delivery. YOU OR YOUR LAWYER may file the Appearance and the Statement of Defence. You may obtain an APPEARANCE form and a STATEMENT OF DEFENCE form at the registry or www.yukoncourts.ca.

YOU OR YOUR LAWYER may file the Appearance and the Statement of Defence. You may obtain an APPEARANCE form and a STATEMENT OF DEFENCE form at the registry or www.yukoncourts.ca.

JUDGMENT MAY BE MADE AGAINST YOU IF

- (a) YOU FAIL to file the Appearance within the time for appearance provided for below, or
- (b) YOU FAIL to file the Statement of Defence within the time for defence provided for below.

TIME FOR APPEARANCE

If this Statement of Claim is served on a person in Yukon, the time for appearance by that person is 7 days from date of the service (not including the day of service).

If this Statement of Claim is served on a person outside Yukon, the time for appearance by that person is 21 days from the date of service (not including the day of service) in the case of a person residing anywhere within Canada, 28 days from the date of service (not including the day of service) in the case of a person residing in the United States of America, and 42 days from the date of service (not including the day of service) in the case of a person residing elsewhere.

OR

If the time for appearance has been set by order of the court, within that time.

TIME FOR DEFENCE

A Statement of Defence must be filed and delivered to the plaintiff within 14 days from the end of the time for appearance provided for above.

OR

Where the time for defence has been set by order of the court, within that time.

(1) The address of the registry is: The Law Courts, 2134 Second Avenue Whitehorse, Yukon Y1A 5H6 Telephone: (867) 667-5937 Fax: (867) 393-6212
(2) The plaintiff's ADDRESS FOR DELIVERY: First Nation of Na-Cho Nyäk Dun c/o Pape Salter Teillet LLP 546 Euclid Avenue Toronto, ON M6G 2T2 Attn: Nuri G. Frame, Tasha Paramalingam, Lillianne Cadieux-Shaw Tel.: 416-460-5350 Fax: 416-916-3726 nframe@pstlaw.ca, tmanoranjana@pstlaw.ca, lcadieuxshaw@pstlaw.ca
(3) The name and office address of the plaintiff's lawyer is: Pape Salter Teillet LLP 546 Euclid Avenue Toronto, ON M6G 2T2 Attn: Nuri G. Frame, Tasha Paramalingam, Lillianne Cadieux-Shaw Tel.: 416-460-5350 Fax: 416-916-3726 nframe@pstlaw.ca, tmanoranjana@pstlaw.ca, lcadieuxshaw@pstlaw.ca

STATEMENT OF CLAIM

1. OVERVIEW

1. The Plaintiff First Nation of Na-Cho Nyäk Dun (“FNNND”) brings this claim against the Defendants, Government of Yukon (“Yukon Government”) and Government of Canada (“Canada”) (collectively, “the Crown”). FNNND claims against the Crown for breaching the *First Nation of Nacho Nyak Dun Final Agreement* (the “Treaty”), unjustifiably infringing FNNND rights under the Treaty, and failing to fulfil constitutional duties flowing from the honour of the Crown, including the duty to take a broad and purposive approach to the interpretation of the Treaty, the duty to act in a way that accomplishes the intended purposes of the Treaty, the duty to act diligently to fulfil Treaty promises and the purposes behind those promises, and the duty to consult and accommodate.
2. FNNND further brings this claim against Yukon Government for regulatory negligence and breach of section 8 of the *Environment Act*, RSY 2002, c 76 (“*Environment Act*”) in connection with the June 2024 Eagle Gold Mine Disaster (defined below) and, more generally, flowing from Yukon Government’s negligent administration of the quartz and placer mining regimes in the traditional territory of FNNND (“FNNND Traditional Territory”).
3. On the basis of these claims, FNNND seeks declaratory relief, damages, and both interlocutory and permanent injunctive relief.

2. THE PARTIES

A. The First Nation of Na-Cho Nyäk Dun

4. For the purposes of this pleading, FNNND is used to refer to both the current rights-holding collective and its predecessors, and “FNNND person” and “FNNND citizen” are used to refer to individual members of that collective.
5. The Plaintiff, FNNND, is a self-governing First Nation in Yukon and one of the Aboriginal peoples of Canada whose rights are affirmed by section 35(1) of the *Constitution Act, 1982*. FNNND entered into the Treaty and the *First Nation of Nacho Nyak Dun Self-Government Agreement* with Canada and Yukon Government on May 29, 1993. The Treaty is a constitutionally protected land claims agreement pursuant to section 35(3) of the *Constitution Act, 1982*.

B. Yukon Government

6. The Defendant, Yukon Government, is a territorial government that exercises delegated authority pursuant to the federal *Yukon Act*, S.C. 2002, c. 7 (“*Yukon Act*”). Since 2003, Yukon Government has exercised principal responsibility for the management of lands and resources in Yukon, pursuant to the 2001 *Yukon Northern Affairs Program Devolution Transfer Agreement* (the “Devolution Agreement”) and to amendments made to the *Yukon Act*. Along with Canada, Yukon Government is FNNND’s Treaty partner.

C. Attorney General of Canada

7. The Defendant, His Majesty the King in Right of Canada, as represented by the Attorney General of Canada (“Canada”), is the federal Crown and has delegated certain of its

authorities to Yukon Government pursuant to the *Yukon Act*. Canada retains jurisdiction over the protection and management of fish and fish habitat, which it regulates pursuant to the *Fisheries Act*, RSC, 1985, c F-14 ("*Fisheries Act*") and related regulations. Along with Yukon Government, Canada is FNNND's Treaty partner.

3. THE APPLICABLE FACTS

A. The Na-Cho Nyäk Dun

8. FNNND is a First Nation of Northern Tutchone people, the Na-Cho Nyäk Dun. In Northern Tutchone, Na-Cho Nyäk Dun literally translates as "Big River People," and is understood by FNNND to describe "the people that come from these ancestral waters." FNNND Traditional Territory covers approximately 160,000 km² of land, of which approximately 130,000 km² lies within the north-central Yukon, with the rest in the Northwest Territories.
9. Since time immemorial, FNNND people have traveled seasonally throughout the entire FNNND Traditional Territory, following wildlife migrations, harvesting cycles, and traditional practices. FNNND Traditional Territory has sustained FNNND, their culture, and way of life for countless generations, and continues to sustain FNNND today.
10. Water is vitally important to FNNND, playing a central role in FNNND's identity, culture, traditional practices, and way of life. Fish—and particularly salmon—are significant to FNNND, holding deep cultural, spiritual, and ecological significance, as well as being a critical source of sustenance. FNNND historically harvested salmon throughout FNNND Traditional Territory, including the McQuesten, Stewart, and Beaver

River watersheds, travelling to those areas to harvest at different times of the year. Fish camps where FNNND people gather to harvest and preserve fish have been crucial sites of community connection and traditional learning for thousands of years.

B. Toward FNNND's Modern Treaty

11. In the 1800s, non-Indigenous people began arriving in Yukon in increasing numbers to trade, trap, and prospect. The Klondike Gold Rush in the late 1800s, in particular, brought large numbers of prospectors to Yukon. The influx of non-Indigenous people affected where and how FNNND could practise their ways of living, starting a pattern—which continues to this day—of FNNND people being dislocated and dispossessed from FNNND Traditional Territory in order to make way for the extraction of mineral resources by non-Indigenous people. This was soon exacerbated by the Crown's colonialist and assimilationist policies. The *Indian Act*, RSC 1985 c. I-5, was first adopted in 1876, restricting FNNND's traditional movements across FNNND Traditional Territory and beginning a process of isolating FNNND into villages and subjecting their way of life to the control of colonial officials.
12. Meanwhile, placer mining—the extraction of gold and other minerals from streams and riverbeds, as epitomized by the gold panning of the early Klondike prospectors—began to take a heavy toll on the waterways of FNNND Traditional Territory, increasing turbidity, depositing sediment, disturbing critical fish habitat, and depleting the salmon and other fish populations upon which FNNND depended. In subsequent decades, quartz mining or hard rock mining operations—a method of mining involving industrial

extraction of minerals from underground—began pockmarking the land with open pits, tunnels, and heavy machinery.

13. In addition to mining, by the mid-1900s, highways and other infrastructure—such as hydroelectric dams on the Mayo River—were built in FNNND Traditional Territory, blocking fish passages, further depleting fish populations, carving up ecosystems, and impairing FNNND’s ability to harvest and practise their traditional way of life.
14. To protect the lands and waters upon which they relied, FNNND began negotiating with the Crown toward a land claims agreement. In 1973, FNNND Chief Peter Lucas and other Yukon First Nations’ Chiefs presented “Together Today for our Children Tomorrow” to Prime Minister Pierre Trudeau, laying out Yukon First Nations’ grievances about, among other things, the impact of mining on First Nations, and the need for a fair settlement between the Crown and Yukon First Nations.
15. FNNND initially sought full control of FNNND Traditional Territory. Having already experienced the impacts of mining on FNNND’s ways of living, FNNND wanted to manage FNNND Traditional Territory, and any development therein, themselves.
16. FNNND eventually agreed to move forward with a limited amount of settlement land in consideration for Treaty promises intended to ensure that FNNND would co-manage the entire FNNND Traditional Territory with public government and that any further development in FNNND Traditional Territory was constitutionally guaranteed by the Treaty to be “Sustainable Development” (defined below).

17. In 1990, Canada, Yukon Government, and the Council of Yukon Indians (now the Council for Yukon First Nations) entered into the Umbrella Final Agreement. The Umbrella Final Agreement provided a framework for individual First Nations' treaties with the Crown, including FNNND's Treaty.
18. FNNND entered into the Treaty on May 29, 1993. FNNND was one of the first four Yukon First Nations to enter into a modern treaty with the Crown.

C. The Treaty Promises

19. At its core, the Treaty promises FNNND that their ways of living will continue throughout FNNND Traditional Territory, that public government will co-manage FNNND Traditional Territory with FNNND, and that development will occur only where it is Sustainable Development.
20. The Treaty defines Sustainable Development as "beneficial socio-economic change that does not undermine the ecological and social systems upon which communities and societies are dependent." Ensuring that development, including mineral development, would *only* occur in FNNND Traditional Territory when it was Sustainable Development is one of the animating promises in the Treaty. Without the Treaty's commitments to Sustainable Development and co-management, and without confidence that those commitments were constitutionally protected and would be upheld by the Crown, FNNND would not have entered into the Treaty.
21. The Treaty creates a robust co-managerial regime to assess, manage, and oversee development activity. One of the primary mechanisms for co-management and

Sustainable Development is the process for regional land use planning established in Chapter 11 of the Treaty. This process was enshrined in the Treaty as the mechanism through which FNNND and the Crown would determine whether and where development could take place on FNNND Traditional Territory. The preamble to Chapter 11 explains its purpose to “ensure that social, cultural, economic and environmental policies are applied to the management, protection and use of land, water and resources in an integrated and coordinated manner so as to ensure Sustainable Development.”

22. The Treaty’s co-managerial regime is further articulated through a variety of other processes and entities, such as the Yukon Environmental and Socio-economic Assessment Board (“YESAB”), established pursuant to s. 12.7.1 of the Treaty for the purpose of assessing all development in Yukon in a manner that, among other things, “protects and maintains environmental quality and ensures that Projects are undertaken consistent with the principle of Sustainable Development” (s. 12.1.1.4), and the Yukon Water Board, established pursuant to s. 14.4.0 of the Treaty to “maintain the Water of the Yukon in a natural condition while providing for its sustainable use” (s. 14.1.1).
23. This co-management regime was constitutionalized in the Treaty to ensure any development on FNNND Traditional Territory was Sustainable Development that would not undermine FNNND’s culture and way of life or the exercise of its Treaty rights.
24. Further assurances were provided that FNNND’s traditional way of life would be protected through the Treaty’s explicit protection of FNNND’s rights, among other things, to harvest fish and wildlife for subsistence throughout FNNND Traditional Territory (s. 16.4.2) and harvest forest resources on Crown land in the exercise of the

traditional pursuits of hunting, fishing, trapping, and gathering or incidental to the practise of traditional customs, culture, and religion or for the traditional production of handicrafts and implements (s. 17.3.1.3). The Treaty also specifically recognizes the importance of salmon to FNNND through the creation of a Salmon Sub-Committee under the Fish and Wildlife Board, pursuant to s. 16.7.17, for the purpose of managing salmon and their habitat. The Treaty further provides for basic needs allocations for the harvesting of salmon in order to meet the distinct cultural and subsistence needs of FNNND. Salmon are mentioned in the Treaty more than 70 times.

25. In signing the Treaty, FNNND retained 4,739 km² of settlement land—less than 3 percent of FNNND Traditional Territory—with the understanding that the Treaty promises made to FNNND with respect to co-management, Sustainable Development, and specific protections for their traditional way of life, would be upheld across the entire FNNND Traditional Territory. These promises are the core of the Treaty bargain. The Treaty bargain fails in the absence of a broad and purposive interpretation of the Treaty and without diligent implementation and fulfillment of these promises.

D. Thirty Years of Unsustainable Development

26. Despite signing the Treaty, FNNND's ways of living and their relationship with their lands and waters have been eroded by the unsustainable scope and scale of development on FNNND Traditional Territory—particularly mining—in the decades since the Treaty was signed. Almost half of all mining activity in Yukon takes place on FNNND Traditional Territory. There are approximately 72,000 quartz claims and approximately 11,000 placer claims on FNNND Traditional Territory. Nearly every mining project that

seeks approval from Yukon Government is authorized, frequently over FNNND's strong opposition. This scale of development has been a disaster for FNNND's lands, rights, and way of life.

27. Entire watersheds have been taken up by placer mining. Once pristine areas are crisscrossed by resource roads. Fish and wildlife populations have collapsed. FNNND's spiritual sites have been degraded. Traditional knowledge that had been preserved for millennia has been lost.
28. Yukon Government has failed to implement land use planning within FNNND Traditional Territory. Despite Chapter 11's Treaty promise of a co-developed regional land use plan to guide development on FNNND Traditional Territory and effectuate Sustainable Development, almost half of FNNND Traditional Territory is not subject to *any* land use plan. Without this planning, development continues to be authorized—including on lands and waters that have significant cultural and ecological significance to FNNND, and sometimes even on its settlement lands—on a piecemeal and entirely reactive basis. There is little attention given to the overall health and well-being of fish and wildlife populations on a regional scale, even when a species, such as salmon, is near extinction, and even less attention is given to the consequences of fish and wildlife population declines on FNNND's rights, harvesting, heritage, and ways of living.
29. FNNND and Yukon Government only entered into a memorandum of understanding to initiate land use planning in 2025—more than three decades after signing the Treaty. The process of undertaking land use planning has not yet begun and it will be years, if not decades, before the process is complete. FNNND's efforts to ensure meaningful interim

protections while the land use planning process unfolds have been repeatedly rebuffed by Yukon Government. Yukon Government refuses to implement *any interim protection of any kind* while the land use planning process is underway, at least until a draft plan—which would take years or even decades—is released.

30. The recent initiation of Chapter 11 regional land use planning without any interim protection may have already caused a staking rush in FNNND Traditional Territory. Prospectors appear keen to secure entitlement to minerals before protections are established. From July 31, 2025, when the initiation of land use planning was announced, to November 20, 2025, approximately 400 new claims were staked. The scale of mineral development in FNNND Traditional Territory has irreparably changed the landscape, as demonstrated by two illustrative maps appended to this Statement of Claim, depicting the scale of mineral development in the core of FNNND Traditional Territory, from the time the Treaty was signed in 1993 to today.

E. The Broken Consultation Regime

31. Yukon Government authorizes numerous projects every month without meaningful consultation with FNNND. FNNND does everything possible to engage with Yukon Government and the mining industry in order to protect their rights, interests, and ways of living. A very small staff within FNNND's Lands and Resources Department attempts to respond to an average of approximately 150 project applications on which Yukon Government requests consultation each year, the vast majority of which relate to mining. FNNND attempts to provide robust submissions regarding the potential impacts of proposed projects—combined with the cumulative effects of prior, existing, and

foreseeable activity—on the exercise of FNNND’s rights and ways of living, and the surrounding environment. Given the volume of consultation requests, however, it is not possible for FNNND to provide meaningful submissions on each project. But if FNNND fails to respond to a request for consultation, Yukon Government chooses to take that to mean the project has no impact on FNNND’s rights and that FNNND has no concerns. Given the pace of consultation requests and the short deadlines provided, FNNND must often rely on template responses to the Crown, submitted without ever engaging Elders, land users, traditional knowledge-holders, and other community members, to address the specific impacts of each project.

32. Yukon Government often relies on the development assessment process conducted by YESAB to fulfil part of its duty to consult FNNND. YESAB is a creature of Chapter 12 of the Treaty and the *Yukon Environmental and Socio-Economic Assessment Act*, SC 2003, c 7, but expressly does not assess impacts to Treaty rights nor cumulative effects. In practice, this means the cumulative effects of development on FNNND’s rights are largely ignored. The extensive and good faith concerns raised by FNNND have little—and in most cases no—effect on whether a project is authorized. Far from being a credible process, rooted in the honour of the Crown and intended to ensure that FNNND’s Treaty rights are protected, for FNNND the duty to consult has become a process trap, consuming enormous time and resources and yielding negligible results.
33. Further, Yukon Government does not act in a manner consistent with obligations under the *United Nations Declaration on the Rights of Indigenous Peoples* (“UNDRIP”), which was adopted in 2016 and incorporated into Canadian law, pursuant to the *United Nations Declaration on the Rights of Indigenous Peoples Act* (“UNDA”), in 2021. UNDRIP

requires engaging First Nations prior to undertaking development activities on their lands, with the objective of obtaining their free, prior, and informed consent for those activities. Yukon Government makes no effort to obtain FNNND's free, prior, and informed consent prior to authorizing mining on FNNND Traditional Territory and, more broadly, makes no effort to conduct itself in a manner consistent with UNDRIP and *UNDA*.

F. The Broken Mining Regime

34. In 2003, Yukon Government took administrative control and management of the lands and resources of Yukon from Canada pursuant to the Devolution Agreement. To effect devolution, Yukon Government passed mirror legislation to cover areas of responsibility formerly administered by Canada. This included re-passing the *Quartz Mining Act*, SY 2003, c 14 ("*Quartz Mining Act*") and the *Placer Mining Act*, SY 2003, c 13 ("*Placer Mining Act*"), two antiquated federal statutes with their roots in the Klondike Gold Rush era that did not reflect the promises in the Treaty. In the Devolution Agreement, Yukon Government committed to co-developing successor legislation to the *Quartz Mining Act* and the *Placer Mining Act* with First Nations to ensure the statutes are consistent with the promises in the Treaty.
35. The *Quartz Mining Act* and the *Placer Mining Act* have never been updated or replaced to be consistent with the Treaty. As such, they continue to be misaligned with the Treaty and its purposes and promises.
36. The Crown authorizes mining activity after an assessment is conducted by YESAB, which, as noted above, has its genesis in Chapter 12 of the Final Agreements. The

promise of Chapter 12 was to create a process that screens all mining projects for adverse environmental or socio-economic effects. The objectives of this promise include, among other things, to protect and promote the well-being of FNNND citizens, to protect and maintain environmental quality and ensure that all projects are undertaken consistent with the principle of Sustainable Development, and to require project proponents to incorporate appropriate mitigative measures in the design of their projects.

37. Importantly, however, YESAB only assesses the impacts of each project on a project-by-project basis. The Crown has no mechanism nor process to assess nor mitigate the cumulative effects of development on the exercise of Treaty rights in FNNND Traditional Territory. Moreover, the Chapter 12 development assessment process was intended to be integrated with the Chapter 11 land use planning process, incorporating information obtained from land use planning in the assessment of development across FNNND Traditional Territory. Without land use plans in place, and the information-gathering that would necessarily underpin such plans, essential information to guide development assessment is entirely missing.
38. Once mining activity is individually assessed, and almost invariably approved, Canada and Yukon Government regulate the activity pursuant to their respective statutory schemes.
39. Fisheries and Oceans Canada ("DFO") regulates protections for fish and fish habitat pursuant to the *Fisheries Act*. While the *Fisheries Act*, in theory, prohibits any work, undertaking, or activity, other than fishing, that results in the death of fish or the harmful alteration, disruption, or destruction of fish habitat, the Minister of DFO has made

specific exceptions for placer mining in Yukon pursuant to 16 watershed authorizations (“Watershed Authorizations”). The Watershed Authorizations permit placer miners to carry out specific works in each of the identified watersheds in Yukon *without* obtaining a specific licence, provided they meet certain predetermined standards. In other words, placer miners in Yukon—unlike miners elsewhere in Canada—do not need to obtain specific licences for activities that are inherently destructive to fish and their habitats. Instead, placer miners benefit from broad, location-based authorizations that automatically permit those activities so long as certain standards are met.

40. Studies released since the implementation of the Watershed Authorizations have consistently raised concerns with the premises on which the Watershed Authorizations are based, including that the Watershed Authorizations rely on a flawed model that assumes a static, rather than dynamic, ecosystem and fails to consider salmon habitats holistically. Despite ongoing concerns with the model on which its decision-making is based, and despite existential declines in salmon populations, the Crown continues to rely on the Watershed Authorizations to permit placer mining. Seven of those watersheds—the McQuesten, Mayo, Stewart, Klondike, Indian, Pelly, and Yukon River South Watersheds (“the FNNND Watersheds”)—fall within FNNND Traditional Territory. The Crown allows placer miners in the FNNND Watersheds to kill fish and destroy critical fish habitats based on the Watershed Authorizations system, without adequate regard for the consequences on FNNND’s right to harvest fish and their relationship with salmon.
41. Yukon Government regulates mining activity pursuant to the *Quartz Mining Act*, the *Placer Mining Act*, the *Waters Act*, SY 2003, c 19 (“*Waters Act*”), and the *Environment Act* (together and collectively with the Watershed Authorizations, the “Mining Regime”).

Various territorial ministers have been conferred powers and responsibilities pursuant to the Mining Regime.

42. The Minister of Energy, Mines and Resources oversees the administration of mineral resources and the licensing of mines within Yukon, and further oversees the Compliance, Monitoring, and Inspections ("CMI") branch. CMI is the primary enforcement agency for mining in Yukon. It is mandated to monitor and inspect mine sites and ensure mining companies comply with their licences and the law. Those employees of CMI that undertake inspection and enforcement activities are called natural resource officers. There are 29 natural resource officers in all of Yukon, responsible for ensuring that mining proponents are complying with the conditions of their licences and for enforcing those conditions where necessary. These natural resource officers are also responsible for monitoring and ensuring that placer mining is conducted in accordance with the Watershed Authorizations issued under the *Fisheries Act*, though DFO maintains responsibility for specific training regarding enforcement under the *Fisheries Act*. Only 10 of those natural resource officers are assigned to the 329 mining projects in FNNND Traditional Territory, and their obligations include overseeing other parts of Yukon as well.
43. The Minister of the Environment administers permits for regulated activities and substances and oversees the Environmental Compliance and Inspections branch, which, alongside CMI, ensures compliance with the *Environment Act* and responds to environmental emergencies in Yukon.

44. Chapter 12 only fulfils its objectives if unsustainable projects do not proceed. Those projects that do proceed must be subject to rigorously enforced mitigative licence conditions. Compliance, monitoring, and enforcement are essential where mining activity is expected to have significant adverse environmental and/or socio-economic effects and is only permitted to proceed where those effects can be mitigated by specific conditions. FNNND has urged the Crown to ensure responsible compliance, monitoring, and enforcement activities on FNNND Traditional Territory; these requests have yielded little to no results. The lack of an effective compliance, monitoring, and enforcement scheme has rendered the Chapter 12 assessment process ineffective.
45. The Crown—and Yukon Government in particular—authorizes mining activity across FNNND Traditional Territory at a scope and pace that exceeds the possibility of responsible consultation, oversight, and enforcement. Contrary to the promises in the Treaty, development in FNNND Traditional Territory is anything but sustainable. This has come into sharp and devastating relief with the Eagle Gold Mine Disaster.

G. The Eagle Gold Mine Disaster

46. The Eagle Gold Mine—owned and operated by Victoria Gold Corp. (“Victoria Gold”)—was the first mining project wholly reviewed, licensed, and permitted by Yukon Government post-devolution. It became the largest gold mine in Yukon’s history.
47. The Eagle Gold Mine is located in the Dublin Gulch valley in FNNND Traditional Territory. Four kilometers downstream from the Eagle Gold Mine site is Haggart Creek, a significant salmon spawning and rearing tributary, and FNNND settlement land. Most of FNNND’s population lives approximately 45 km away, in Mayo, Yukon.

48. FNNND has long used Haggart Creek, as well as the Dublin Gulch watershed and surrounding areas, to carry out traditional activities such as fishing, hunting, and gathering. Haggart Creek, and nearby rivers and lakes, have been fished by FNNND for generations, particularly for salmon and Arctic grayling. This area has also been known for moose, deer, cougar, grizzly and black bears, and wolves. Grouse and ptarmigan have commonly been hunted in the area. Dublin Gulch's close proximity to Mayo has provided FNNND citizens, particularly Elders, with the benefits of accessibility and short travel time in order to engage in subsistence harvesting and cultural activities.
49. The Eagle Gold Mine obtained gold through a heap leaching process that requires a cyanide solution. Heap leaching has been banned in many countries around the world due to the environmental risks associated with it. When it is used, it is normally used in flat terrain, and not in steep, mountainous areas with sporadic and unstable permafrost, like the Dublin Gulch valley.
50. In YESAB's assessment of the Eagle Gold Mine, YESAB determined the mine had the potential for significant adverse environmental and socio-economic effects. YESAB recommended to Yukon Government that the project proceed only so long as the proponent complied with all relevant legislation and the mitigative terms and conditions YESAB specifically recommended. Yukon Government accepted this recommendation and the recommended terms and conditions.
51. Throughout the development assessment and licensing process, FNNND consistently expressed concerns about how the Eagle Gold Mine would affect their rights and people, as well as nearby water, land, and wildlife. During consultation in the YESAB process,

for instance, FNNND expressed concerns about the possibility of serious adverse effects on their harvesting rights, and noted that in order to protect those rights, Yukon Government must properly regulate the Eagle Gold Mine through rigorous licensing conditions and enforcement. During the water-use licensing process, FNNND strongly articulated that the water-use licence needed to operate as a tool to ensure that the numerous substantial environmental risks of the project did not materialize. Yukon Government failed to engage substantively in the licensing process, leaving consideration of Victoria Gold's licensing proposals to FNNND and other involved parties.

52. Once Victoria Gold was issued mining and water-use licences, Yukon Government failed to ensure Victoria Gold was complying with its licence conditions, despite the concerns from YESAB and FNNND. For instance, Yukon Government never ensured that Victoria Gold had cyanide destruction capabilities on-site, as specifically required by its licences, despite this being a source of ongoing concern for FNNND from the outset of the project. Further, on numerous occasions, Victoria Gold mismanaged its water capacity and exceeded the desired available storage of water on-site, in ongoing violation of its water licence. Yukon Government did not ensure there was sufficient emergency storage capacity at the Eagle Gold Mine.
53. Between 2019 and 2022, Victoria Gold experienced six cyanide or process solution spills, as well as spills of other toxic materials, such as diesel fuel, hydraulic fluid, and coolant. Over the course of its operations, Victoria Gold was non-compliant with at least one of the *Waters Act*, *Quartz Mining Act*, or *Environment Act* in more than half of the inspections conducted. Of the "compliant" inspections, inspectors still noted significant contaminant spills, effluent exceedances, design flaws, or other operational issues. For all

these acts of non-compliance, Victoria Gold was given a *single* inspector's direction and fined a total of \$95,430. This fine represented 0.022 percent of its \$416.9 million revenue in a single year, 2023. Victoria Gold continued to breach the conditions of its licences after the fines were issued. No other penalties were ordered.

54. On January 6, 2024, a landslide of approximately 113,000 tonnes of crushed ore occurred at the Eagle Gold Mine. Despite this serious event, Victoria Gold continued stacking ore and engaging in heap leaching. It did not obtain a root cause report indicating what had happened until July 2024. Yukon Government did not engage an expert of its own or conduct any sort of investigation into the landslide, did not issue any directions to Victoria Gold or engage in any compliance or enforcement action, and fully cleared Victoria Gold to continue operations by May 2024, before knowing the root cause of the slide. The root cause report for the January 2024 landslide was released 11 days after the Eagle Gold Mine Disaster.
55. On June 24, 2024, 11.3 million dry tonnes of heaped ore collapsed, triggering a landslide of ore and causing 800 million litres of toxic cyanide solution to spill into unprotected fish-bearing waters and groundwaters (the "Eagle Gold Mine Disaster"). These toxins were released onto the ground and into the groundwater in the Haggart Creek drainage. Water quality results in the nearby Haggart Creek soon showed cyanide levels six times above the national guidelines for protection of aquatic life.
56. Only two months after the Eagle Gold Mine Disaster did Yukon Government—very much belatedly—recognize that Victoria Gold could not be relied on to manage the mine site and the response to the Eagle Gold Mine Disaster. Yukon Government brought a

proceeding in Ontario Superior Court to have Victoria Gold placed into receivership. On August 14, 2024, PricewaterhouseCoopers Inc. was appointed as receiver and manager, without security, of all of the assets, undertakings, and properties of Victoria Gold, including the Eagle Gold Mine, in order to facilitate immediate environmental remediation in response to the Eagle Gold Mine Disaster.

57. The Eagle Gold Mine Disaster was caused, in part, by the same errors that had led to the January 2024 landslide a few months prior. Indeed, the Eagle Gold Mine Disaster was partially caused by concerns that FNNND had raised repeatedly in both the development assessment and licensing processes, such as the failure to account for local terrain and climate and the failure to protect the heap leach system from freezing conditions.
58. Further, the disastrous effects of the Eagle Gold Mine Disaster have been exacerbated by the limited available storage on-site and the absence of a facility to treat cyanide, which were concerns specifically identified by FNNND, and ongoing concerns throughout the life cycle of the mine. These concerns were meant to be mitigated through licence conditions, but they were consistently un-enforced.
59. Yukon Government failed to responsibly oversee and regulate the Eagle Gold Mine throughout the course of its assessment process, construction, and operation. Yukon Government failed to perform adequate inspections of the mine and failed to ensure proper enforcement when Victoria Gold did not comply with the terms of its licences. In so doing, Yukon Government enabled and was responsible for the conditions that caused the Eagle Gold Mine Disaster.

60. The Eagle Gold Mine Disaster has led to fish deaths, health advisories, and a loss of FNNND's ability to exercise their Treaty rights in the waters and lands impacted by the disaster. FNNND citizens are afraid of their own lands and waters because of the poisons that now pollute them. The Eagle Gold Mine Disaster reflects the pinnacle of un-Sustainable Development. Yukon Government officials have characterized the Eagle Gold Mine Disaster as the worst environmental incident and most significant mining catastrophe in the history of Yukon. Yukon Government has also refused—despite countless requests from FNNND—to convene a public inquiry into the causes of the Eagle Gold Mine Disaster. While publicly laying blame at the feet of Victoria Gold's management, Yukon Government has demonstrated a persistent refusal to investigate the root causes of the disaster.
61. Since the Eagle Gold Mine Disaster, toxic cyanide- and metal-laced water has flowed, and continues to flow, out of the Eagle Gold Mine and into the nearby environment. The levels of cyanide in Haggart Creek have consistently exceeded water quality guidelines for chronic or acute effects to aquatic life. Elevated concentrations of cyanide have been measured in waters 27 km away from the mine. Yukon Government's chief medical health officer has advised against eating any fish from Haggart Creek. In the face of calamitous declines in Yukon salmon populations, FNNND's spring grayling fishery in Haggart Creek had become a critical source of sustenance and culture for FNNND. In the wake of the Eagle Gold Mine Disaster, however, FNNND can no longer safely use this fishery. Further, while Yukon Government initially indicated that drinking water in Mayo was safe to drink, engineers have noted that the groundwater, which is the main source of

drinking water for the Mayo area, is contaminated, and the full extent of what this means on a long-term basis is currently unknown.

62. As of the date of this action, the situation at the Eagle Gold Mine is not stable, even after seventeen months of remediation work.

H. Unsustainable Authorizations Post-Eagle Gold Mine Disaster

63. In the aftermath of the Eagle Gold Mine Disaster, FNNND asked Yukon Government for a moratorium on all mineral staking and development in FNNND Traditional Territory to allow both governments' full focus on managing and mitigating the disaster. Yukon Government refused to agree to a moratorium, instead agreeing only to pause consultation activities with FNNND for two months. While consultation was paused, mineral claim staking and applications for exploration permits continued unabated.
64. After the two-month pause, Yukon Government sought to reinitiate consultation, providing FNNND with a backlog of 67 outstanding projects that required consultation. FNNND advised that consulting on the full backlog simultaneously exceeded their capacities and required a triaged approach. Over the next few months, FNNND and Yukon Government corresponded about developing a structured approach to the consultation backlog and meeting to discuss such an approach.
65. In March 2025, however, Yukon Government notified FNNND it would be unilaterally resuming consultation on 23 of the now 112 outstanding proposed mineral projects in FNNND Traditional Territory, without agreement on a triaged approach, with the remainder of the outstanding 89 consultation requests to be completed by May 2025. In

other words, Yukon Government planned to consult FNNND on nearly 40 projects per month. FNNND was given three days' notice before consultation would be resumed.

66. FNNND attempted to respond to the ever-increasing backlog of requests, triaging their efforts on what appeared to be the largest and most impactful projects, and relying heavily on template responses for the rest. The list of consultation requests continued to grow.
67. At the end of March 2025, Yukon Government began simply authorizing projects without waiting for consultation with FNNND to be completed, including authorizing significant quartz exploration activities and placer operations in important watersheds of FNNND Traditional Territory.
68. In May 2025, Yukon Government wrote to FNNND and other First Nations, indicating it was unilaterally extending the authorizations for numerous placer and quartz mining operations without a new assessment by YESAB nor consultation with affected First Nations. It turned out this was in response to Yukon Government's own delays in processing renewal applications. Yukon Government apparently decided that the solution to having an unmanageable number of projects to authorize was not to reduce the number of projects, but to simply waive assessment, regulatory review, and consultation.
69. Fundamentally, Yukon Government is authorizing more mining activity than it can conduct meaningful consultation on or provide regulatory oversight for, leading to environmental disasters on FNNND Traditional Territory and breaching FNNND's constitutionally protected Treaty rights and promises.

I. The Salmon Crash

70. While the stock of Pacific salmon in Yukon has been declining for decades, the Crown's ongoing mismanagement of mining has contributed to a "catastrophic collapse" of salmon in the last five to ten years, leading salmon to the precipice of extirpation. In 2022 and 2023, only 12 percent of the average number of Chinook salmon were detected at the mouth of the Yukon River, and 40 percent of those fish died before reaching the Canadian border. The population decline has not only threatened the existence of the species but has jeopardized FNNND's food security, culture, and knowledge transfer.
71. On April 1, 2024, Canada and the State of Alaska signed the "Agreement of April 1, 2024 regarding Canadian-origin Yukon River Chinook Salmon for 2024 through 2030," an agreement that applied a seven-year moratorium on all Yukon River Chinook salmon harvesting. This includes harvesting for commercial, sport, domestic, and personal use. Subsistence harvesting, including Indigenous harvesting, is only permitted when a rebuilding target of 71,000 individual Chinook salmon is exceeded. During the moratorium, the State of Alaska and Canada may provide limited harvesting opportunities for ceremonial and cultural purposes.
72. Unfortunately, the moratorium does not apply to mining. It is incontrovertible that mining and other industrial activities cause far more adverse impacts on fish and fish habitats than First Nations' subsistence harvesting. And yet, it is FNNND and other First Nations who bear the burden of conservation, enduring the significant socio-economic effects of the moratorium while experiencing the ongoing and destructive impacts of mining. The

mining industry—the true culprit in the decline—continues at an ever-accelerating pace. Development in FNNND Traditional Territory is less sustainable by the day.

4. THE CROWN'S LIABILITY

A. Yukon Government Has Breached the Treaty

73. Yukon Government has breached the Treaty and unjustifiably infringed FNNND's rights under the Treaty.
74. Yukon Government's breaches and unjustifiable infringements include the following:
 - a) Yukon Government has failed to develop land use plans with FNNND for the entirety of FNNND Traditional Territory and failed to implement any interim protections during the pendency of a land use planning process, instead allowing projects to proceed in areas where land use planning has not concluded, or even commenced;
 - b) Yukon Government has failed to fulfil the promises of the Treaty through the proper monitoring, inspections, compliance, and enforcement of mining activities licensed under the *Quartz Mining Act* and *Placer Mining Act*, mining-related water-use licences under the *Waters Act*, and placer mining-related authorizations under the *Fisheries Act*;
 - c) Yukon Government has failed to update the Mining Regime to reflect the promises and the purposes behind the promises of the Treaty, leaving a statutory and regulatory structure in place that not only does not consider the Treaty

promise of Sustainable Development as it relates to mining activity but actively works against it;

- d) Yukon Government has failed to uphold the spirit and intent of the Treaty, including that FNNND could practise their rights and ways of living throughout FNNND Traditional Territory;
- e) Yukon Government has failed to assess, monitor, and manage the cumulative effects of mining activities within FNNND Traditional Territory;
- f) Yukon Government has failed to fulfil the Treaty promise of co-management of FNNND Traditional Territory in partnership with FNNND;
- g) Yukon Government has failed to fulfil the Treaty promise of Sustainable Development; and
- h) Yukon Government has failed to fulfil its obligation to manage and protect FNNND Traditional Territory, including the waters and ecosystems within those lands, in such a way as to seek to minimize impacts on FNNND's Treaty rights and to ensure the continued meaningful exercise of those rights.

75. The cumulative impacts of Yukon Government's actions and inactions have diminished FNNND Traditional Territory and the forests, waters, fish, and wildlife that FNNND citizens depend upon. While the special relationship that First Nations have with their traditional territories cannot be easily divided into specific activities, Yukon Government's actions and inactions have resulted in a significant or meaningful diminishment or loss of FNNND citizens' abilities to:

- a) undertake traditional and spiritual activities and ways of living in FNNND Traditional Territory;
- b) maintain FNNND's holistic relationship with FNNND Traditional Territory, which FNNND has enjoyed since time immemorial;
- c) access traditional foods, berries, and medicines in FNNND Traditional Territory;
- d) hunt and trap game in FNNND Traditional Territory;
- e) access clean and fresh water within FNNND Traditional Territory;
- f) fish within FNNND Traditional Territory;
- g) maintain and access teaching sites within FNNND Traditional Territory;
- h) maintain FNNND's culture and traditional knowledge and transmit that culture and knowledge to the next generation;
- i) maintain a livelihood from hunting, fishing, trapping, or harvesting;
- j) manage, protect, and steward the lands and waters within FNNND Traditional Territory;
- k) navigate through FNNND Traditional Territory using traditional travel ways and trails; and
- l) enjoy the abundance, health, and diversity of wildlife and fish in FNNND Traditional Territory.

76. These impacts are not singular and isolated. Rather, they are compounded by one another over time. With every additional mineral project authorized under Yukon Government's current broken regime, FNNND's ability to meaningfully practise their rights and way of life is further eroded and the promise of the Treaty is undermined.
77. Moreover, Yukon Government's breaches of the Treaty and unjustifiable infringements of FNNND's rights under the Treaty have led it to realize significant savings by failing, among other things, to ensure there are sufficient resources and personnel necessary to adequately perform its legal obligations under the Treaty. Yukon Government should not be permitted to financially benefit from its failures to fulfill its obligations under the Treaty, and any such benefits should be disgorged.

B. Canada Has Breached the Treaty

78. Canada has breached the Treaty and unjustifiably infringed FNNND's rights under the Treaty.
79. Canada's breaches and unjustifiable infringements include the following:
- a) Canada has exempted placer mining from the fish and fish habitat protection provisions under the *Fisheries Act* without a regulatory scheme in place that reflects FNNND's rights under the Treaty to have their traditional way of life protected and to ensure that all development is Sustainable Development;
 - b) Canada has failed to consistently update or replace the Watershed Authorizations despite known flaws and deficiencies with the model on which the Watershed Authorizations are based and the underlying data on which that model relies;

- c) Canada has failed to ensure that decisions authorizing placer mining are made based on accurate and comprehensive data and current scientific knowledge, ecological conditions, and best practices;
- d) Canada has failed to ensure that placer mining is authorized in a manner that accounts for the importance of salmon overwintering, rearing habitats, and spawning habitats;
- e) Canada has failed to assess, monitor, and manage the cumulative effects of placer mining activities within FNNND Traditional Territory;
- f) Canada has failed to fulfil its obligation to manage and protect the fish and fish habitats within FNNND Traditional Territory in such a way as to minimize impacts on FNNND's Treaty rights and to ensure the continued meaningful exercise of those rights;
- g) Canada has failed to properly evaluate the effects of placer mining on the aquatic health of fish and fish habitats;
- h) Canada has failed to ensure proper training for inspectors designated to conduct placer mining inspections under the *Fisheries Act*;
- i) Canada has failed to ensure proper mitigations when authorizing placer mining that results in the death of fish and destruction of fish habitat; and
- j) Canada has permitted placer mining to permanently alter and destroy fish habitats in a manner contrary to Sustainable Development.

80. These failures have led to worse outcomes for fish populations and their habitats, breaching the Treaty and FNNND's Treaty rights, particularly the right to harvest fish and wildlife in FNNND Traditional Territory for food, ceremonial, and spiritual purposes.

81. The cumulative impacts of Canada's actions and inactions have diminished FNNND Traditional Territory and the waters, fish, and overarching ecosystem that FNNND citizens depend upon. This has resulted in a significant or meaningful diminishment or loss of FNNND citizens' abilities to:
 - a) undertake traditional and spiritual activities and ways of living in FNNND Traditional Territory;
 - b) maintain FNNND's holistic relationship with FNNND Traditional Territory which FNNND has enjoyed since time immemorial;
 - c) fish within FNNND Traditional Territory;
 - d) maintain and access teaching sites within FNNND Traditional Territory;
 - e) maintain FNNND's culture and traditional knowledge and transmit that culture and knowledge to the next generation;
 - f) maintain a livelihood from fishing or harvesting;
 - g) manage, protect, and steward the waters within FNNND Traditional Territory;
 - and

- h) enjoy the abundance, health, and diversity of fish in FNNND Traditional Territory.
82. With every additional placer mining project authorized under Canada's current regime, FNNND's ability to meaningfully practise their rights and way of life is further eroded and the promise of the Treaty is undermined.

C. The Crown Has Breached Duties Flowing from the Honour of the Crown

83. Canada and Yukon Government have both breached their constitutional and legally enforceable duties and obligations flowing from the honour of the Crown in relation to the Treaty.
84. Specifically, the Crown has breached the following duties and obligations flowing from the honour of the Crown:
- a) to take a broad, purposive approach to the interpretation of the Treaty;
 - b) to act in a way that accomplishes the intended purposes of the Treaty; and
 - c) to act diligently to fulfil the Treaty's promises and the purposes behind those promises.
85. The Treaty committed the Crown to co-management of FNNND Traditional Territory in partnership with FNNND, to the promise of Sustainable Development, and to constitutional protection of FNNND's way of life.
86. Through a pattern of malfeasance, misfeasance, or indifference, the Crown has failed to purposively interpret the Treaty, failed to interpret the Treaty in accordance with the

principles flowing from UNDRIP, failed to act in a way that accomplishes the intended purposes of the Treaty, and failed to diligently implement the promises of the Treaty.

87. In particular, Yukon Government has failed to develop or implement land use plans across the entirety of FNNND Traditional Territory, failed to provide for interim protections while implementing a land use planning process, failed to provide for any mechanisms capable of examining cumulative effects of development on FNNND's rights and ways of living, failed to provide for an effective monitoring and enforcement regime for a proponent's mining and water-use licence conditions, and, despite these many failures, continued to authorize rapid and wide-scale unsustainable development across FNNND Traditional Territory.
88. In particular, Canada has failed to fulfil its obligation to manage and protect the fish and fish habitats within FNNND Traditional Territory in such a way as to minimize impacts on FNNND's Treaty rights and to ensure the continued meaningful exercise of those rights, and has permitted placer mining to permanently alter and destroy fish habitats in a manner contrary to Sustainable Development.

D. Yukon Government's Consultation Regime Breaches the Duty to Consult

89. Yukon Government owes a duty to consult and, if appropriate, accommodate FNNND regarding proposed activity in FNNND Traditional Territory that may impact their rights.

90. Yukon Government's consultation process fails to uphold the Crown's constitutional duty to consult by:

- a) failing to provide FNNND with a reasonable opportunity to make submissions for consideration;
- b) failing to allow for meaningful engagement on potential impacts of proposed activity on FNNND's rights and interests;
- c) failing to approach consultation with an open mind and a willingness to reject proposed activity based on impacts to FNNND's rights;
- d) failing to address and mitigate concerns raised by FNNND;
- e) failing to assess the potential impacts of activity combined with the cumulative effects of prior, existing, and foreseeable activity; and
- f) failing to specifically consider and accommodate, as appropriate, FNNND's concerns in the context of the Treaty promise of land use planning.

91. Consultation has instead occurred under unilateral and arbitrary timelines, at a pace and scope impossible for FNNND to meaningfully respond to given their already over-extended capacity challenges from the Eagle Gold Mine Disaster. The consequence has been pro forma consultation with predetermined outcomes. Under these conditions, Yukon Government has been unable or could not reasonably be expected to:

- a) determine the level of consultation required, by reference to the significance of the potential adverse impact on FNNND's rights;

- b) ensure consultation had a substantive dimension, more than exchanging and discussing information, to arrive at mutual understanding of the core issues;
 - c) inform itself of the impact the proposed project would have on FNNND, including by focusing the consultative inquiry on impacts to FNNND's rights, rather than as a permutation or afterthought of environmental effects;
 - d) consider existing limitations on FNNND's rights in each of the proposed project areas, including understanding any cumulative effects and historical context to inform the scope of the duty to consult;
 - e) test and be prepared to modify its proposed course of action based on information and insight obtained through consultation;
 - f) determine if accommodation is appropriate under the circumstances, and engage in dialogue leading to a demonstrably serious consideration of accommodation; and
 - g) communicate its findings to FNNND and attempt to substantially address their concerns.
92. The effect of Yukon Government's consultation process has been to render consultation a meaningless box-checking exercise, falling well below what is required to maintain the honour of the Crown.
93. Further, or in the alternative, Yukon Government has failed to construe its consultation obligations in a manner consistent with the principles flowing from UNDRIP, which

require a robust consultation process before approving mineral projects affecting FNNND Traditional Territory.

E. Yukon Government is Liable in Regulatory Negligence for the Eagle Gold Mine Disaster

94. Yukon Government is liable for its negligence in regulating the Eagle Gold Mine. That negligence led directly to the Eagle Gold Mine Disaster and FNNND's subsequent damages. In the alternative, Yukon Government's negligence materially contributed to the risk of the Eagle Gold Mine Disaster and FNNND's subsequent damages.

i. Yukon Government owes FNNND a duty of care

95. Yukon Government owes a duty of care to FNNND. FNNND and Yukon Government have a relationship of proximity—established through the promises of the Treaty—in which any failures of Yukon Government to take reasonable care in regulating the Eagle Gold Mine—which was on FNNND Traditional Territory and near their settlement lands—would foreseeably cause loss or harm to FNNND. Proximity further arose based on the specific interactions between FNNND and Yukon Government relating to the Eagle Gold Mine. The nature of this relationship means it is directly foreseeable that a failure on Yukon Government's part to take reasonable care in regulating the Eagle Gold Mine might cause loss or harm to FNNND. No residual policy considerations should negate or limit the imposition of a duty of care in law upon Yukon Government.

ii. Yukon Government breached that duty of care, causing damage to FNNND

96. Yukon Government failed to exercise the standard of care that would be expected of an ordinary, reasonable, and prudent mining regulator under the circumstances, including through enforcement of Victoria Gold's licence conditions and the provisions of the Mining Regime. Yukon Government failed to properly or consistently monitor the Eagle Gold Mine, failed to properly identify risks and mismanagement, and failed to take meaningful action to address those risks and deter re-occurrence. Further, Yukon Government failed to properly determine the cause of the ore slide in January 2024 before allowing gold production to proceed, failed to act with diligence in enforcing compliance with Victoria Gold's licences and statutory responsibilities and in responding to ongoing and worsening issues of non-compliance at the Eagle Gold Mine, and failed to pause or cancel Victoria Gold's licences where it was in the public interest to do so.
97. These breaches were operational decisions by Yukon Government that led directly to the Eagle Gold Mine Disaster.

iii. FNNND has suffered loss as a result of Yukon Government's negligence

98. As a result of the above-enumerated breaches of the standard of care of a reasonable regulator, FNNND has suffered numerous losses, including:
- a) diminished ability to exercise their Treaty rights, ways of living, and traditional practices on lands and waters damaged by the Eagle Gold Mine Disaster;
 - b) loss and use of enjoyment of FNNND lands and waters;

- c) emotional and psychological harm to FNNND citizens;
 - d) physical injury to FNNND citizens as a result of exposure to contaminants;
 - e) out-of-pocket remediation expenses, including the reasonable cost of repairing and remediating FNNND lands and waters damaged by the Eagle Gold Mine Disaster and responding to the Eagle Gold Mine Disaster;
 - f) resulting diminution in value of all FNNND settlement lands damaged by the Eagle Gold Mine Disaster;
 - g) lost profits or loss of income that would otherwise be obtained through commercial activities on lands in FNNND Traditional Territory damaged by the Eagle Gold Mine Disaster; and
 - h) general loss of use of lands and waters in FNNND Traditional Territory damaged by the Eagle Gold Mine Disaster.
99. But for Yukon Government's regulatory negligence, these losses would not have occurred.
100. FNNND further seeks aggravated damages as against Yukon Government for its failure to responsibly regulate the Eagle Gold Mine. FNNND repeatedly stated its concerns with the Eagle Gold Mine and repeatedly stated that their concerns would only be addressed through regulatory compliance and strong enforcement. Yukon Government knew of FNNND's unique and constitutionally protected interests in the nearby lands, knew of the need for strong regulatory compliance to ensure protection of those interests, knew of its

duties to act pursuant to the honour of the Crown, and yet failed to ensure such compliance was enforced. Yukon Government's regulatory failures and related Treaty breaches are thus particularly high-handed and oppressive, with wanton or reckless disregard for FNNND's repeated concerns and requests for regulatory assurances. Further, the particular relationship between the parties should expose Yukon Government to special liability.

F. Yukon Government Has Breached Section 8 of the *Environment Act*

101. Yukon Government is liable for failure to act as a prudent trustee of the public trust to protect the natural environment from actual or likely impairment, pursuant to section 8 of the *Environment Act*. The *Environment Act* recognizes that Yukon Government acts as the trustee of the collective interest of Yukoners in the quality of the natural environment and the protection of the natural environment for the benefit of present and future generations and further provides a right of action to persons against Yukon Government where it fails to fulfil its duties as trustee.
102. Yukon Government failed to act as an ordinarily prudent trustee in regulating the Crown land in and surrounding the Eagle Gold Mine in such a manner that protected the quality of the surrounding natural environment for the collective benefit of Yukon citizens and therefore breached its obligations as trustee pursuant to the *Environment Act*.
103. Yukon Government did not act with reasonable skill and prudence in regulating the Eagle Gold Mine, enforcing the conditions of Victoria Gold's licences, and enforcing its obligations as trustee through all appropriate delegates. In particular, Yukon Government failed to act with ordinary prudence by failing to respond appropriately and effectively to

clear and ongoing risks to the quality of the natural environment as a result of the operation of the Eagle Gold Mine.

104. Yukon Government ought not to be fairly excused for such an egregious and persistent breach of trust.

G. Injunctive Relief is Required

105. Pursuant to the inherent and equitable jurisdiction of this Honourable Court and/or pursuant to the statutory provisions contained in section 12 of the *Environment Act*, FNNND seeks both interlocutory and permanent injunctive relief.
106. FNNND seeks an interlocutory injunction requiring Yukon Government to institute a prohibition on all mineral staking in those regions of FNNND Traditional Territory that are not currently subject to an approved Chapter 11 regional land use plan (the “Unplanned Regions”) until the earliest of: (a) the implementation of approved Chapter 11 regional land use plans in the Unplanned Regions; (b) the implementation of mutually acceptable interim protections in the Unplanned Regions, in advance of the implementation of a land use plan; or (c) the conclusion of this action.
107. In addition, FNNND seeks an interlocutory injunction requiring Yukon Government to develop, in collaboration with FNNND and within six months of the court order, a mutually acceptable protocol and timeline for the meaningful and bona fide consultation and accommodation of FNNND for all proposed mineral development activities in FNNND Traditional Territory in a manner that assesses the proposed activities in the context of the cumulative effects of past and ongoing development on the environment

and on the exercise of FNNND's rights and interests, failing which the parties may seek further direction from this Court.

108. FNNND has raised a number of serious issues to be tried: numerous breaches of the Treaty and the duties flowing from the honour of the Crown, breach of the constitutional duty to consult, regulatory negligence, and breach of the statutory duty to act in the public trust.
109. FNNND will suffer irreparable harm if the relief is not granted.
110. Unless this Honourable Court steps in, the status quo will continue inflicting irreparable harm to FNNND's Treaty and other constitutionally protected rights, as well as to the public interest in upholding the honour of the Crown. This type of harm cannot be quantified in monetary terms or cured by damages.
111. The balance of convenience favours the granting of injunctive relief. FNNND has limited the injunctive relief related to mineral staking such that it only affects the Unplanned Regions, which are the lands most vulnerable to out-of-control mining. All the relief sought has been crafted to minimize impacts on current third-party rights holders. Moreover, the relief requested from Yukon Government is relief that is already required pursuant to the Treaty and past direction from this Court. The Treaty is not just words. It requires action. That action is long past due.
112. FNNND further seeks permanent injunctive relief.
113. In particular, FNNND seeks a permanent injunction enjoining Yukon Government from undertaking, causing, and/or permitting activities on FNNND Traditional Territory that

breach Yukon Government's obligations to FNNND under the Treaty or infringe FNNND's rights under the Treaty.

114. Further, FNNND seeks a permanent injunction enjoining Yukon Government from authorizing any development on FNNND Traditional Territory that is not Sustainable Development.
115. FNNND also seeks a mandatory and permanent injunction requiring Yukon Government to amend or replace the Mining Regime, in collaboration with FNNND and other First Nations, in order to make the Mining Regime consistent with the Treaty's promises, the purposes behind those promises, and the spirit and intent of the Treaty.
116. Lastly, FNNND seeks a mandatory and permanent injunction requiring Yukon Government to develop a consultation plan with FNNND in a way that fulfils the Crown's constitutional duty to consult and, if appropriate, accommodate FNNND.
117. As against Canada, FNNND seeks a mandatory and permanent injunction requiring Canada to amend or replace the Watershed Authorizations, in collaboration with FNNND and other First Nations, in order to ensure the placer mining authorization regime is consistent with the Treaty's promises and the purposes behind those promises.
118. FNNND further seeks a permanent injunction enjoining Canada from authorizing any placer mining on FNNND Traditional Territory that is not consistent with Sustainable Development.

5. RELIEF SOUGHT

The Plaintiff claims as against Yukon Government as follows:

1. A declaration that Yukon Government has breached the Treaty and/or unjustifiably infringed FNNND's rights under the Treaty by failing to develop and implement a Chapter 11 regional land use plan with FNNND;
2. A declaration that Yukon Government has breached the Treaty and/or unjustifiably infringed FNNND's rights under the Treaty by failing to implement any interim protections during the current Chapter 11 land use planning process;
3. A declaration that Yukon Government has breached the Treaty and/or unjustifiably infringed FNNND's rights under the Treaty by failing to ensure the proper monitoring and enforcement of mining-related licences and authorizations issued under the Mining Regime;
4. A declaration that Yukon Government has breached the Treaty and/or unjustifiably infringed FNNND's rights under the Treaty by failing to update the Mining Regime to reflect the Treaty's promises;
5. A declaration that Yukon Government has breached the Treaty and/or unjustifiably infringed FNNND's rights under the Treaty by failing to consider, monitor, and manage the cumulative effects of mining within FNNND Traditional Territory;

6. A declaration that the cumulative effects of unsustainable mining in FNNND Traditional Territory breaches the Treaty and/or unjustifiably infringes FNNND's rights under the Treaty;
7. A declaration that Yukon Government has breached the Treaty and/or unjustifiably infringed FNNND's rights under the Treaty by failing to ensure that FNNND Traditional Territory is co-managed with FNNND;
8. A declaration that Yukon Government has breached the Treaty and/or unjustifiably infringed FNNND's rights under the Treaty by failing to ensure that development in FNNND Traditional Territory is Sustainable Development;
9. A declaration that Yukon Government has breached the Treaty and/or unjustifiably infringed FNNND's rights under the Treaty by failing to manage and protect FNNND Traditional Territory, including the waters and ecosystems within those lands, in such a way as to minimize impacts on FNNND's Treaty rights and ensure the continued meaningful exercise of those rights;
10. A declaration that Yukon Government has breached the duty flowing from the honour of the Crown to take a broad and purposive approach to the interpretation of the Treaty;
11. A declaration that Yukon Government has breached the duty flowing from the honour of the Crown to act in a way that accomplishes the intended purposes of the Treaty;
12. A declaration that Yukon Government has breached the duty flowing from the honour of the Crown to act diligently to fulfil the Treaty promises and the purposes behind those promises;

13. A declaration that Yukon Government has breached the honour of the Crown by failing to meaningfully consult with FNNND, and, if necessary, accommodate FNNND on proposed mining activity in FNNND Traditional Territory;
14. A declaration that Yukon's consultation regime for proposed mining activity is inconsistent with section 35 of the *Constitution Act, 1982*, the honour of the Crown, and the duties flowing therefrom;
15. A declaration that Yukon Government's consultation regime for proposed mining activity is inadequate to discharge its duty to consult with First Nations, including with respect to the cumulative effects of development on the exercise of Treaty rights;
16. A declaration that Yukon Government has failed to interpret and implement its legal obligations to FNNND, including pursuant to the Treaty and section 35 of the *Constitution Act, 1982*, in accordance with the principles flowing from UNDRIP;
17. A declaration that Yukon Government has failed to interpret and implement its consultation obligations to FNNND regarding proposed mineral projects affecting FNNND Traditional Territory in a manner consistent with the principles flowing from UNDRIP, including but not limited to the principles of free, prior, and informed consent;
18. A declaration that Yukon Government has failed to meet its responsibilities as trustee of the public trust pursuant to section 8 of the *Environment Act*;
19. An order that Yukon Government account for and disgorge any savings realized as a result of its breaches of the Treaty and unjustifiable infringements of FNNND's rights under the Treaty;

20. Damages and/or equitable compensation for breach of the Treaty, unjustifiable infringement of FNNND's Treaty rights, and breach of the duties flowing from the honour of the Crown in relation to FNNND's Treaty rights;
21. Damages and/or equitable compensation for regulatory negligence;
22. Damages and/or equitable compensation for breach of the statutory duty to act as trustee of the public trust;
23. Aggravated damages in the amount of \$150,000,000.00;
24. The following injunctive relief:
 - a) An interlocutory injunction requiring Yukon Government to institute a prohibition on all mineral staking in the Unplanned Regions, until the earliest of:
 - i) the implementation of a Chapter 11 regional land use plan in the Unplanned Regions;
 - ii) the implementation of mutually acceptable interim protections in the Unplanned Regions, in advance of the implementation of a Chapter 11 regional land use plan; or
 - iii) the conclusion of this action;
 - b) An interlocutory injunction requiring Yukon Government to develop, in collaboration with FNNND and within six months of the court order, a mutually acceptable protocol and timeline for the meaningful and bona fide consultation and accommodation of FNNND for all proposed mineral development activities

in FNNND Traditional Territory in a manner that assesses the proposed activities in the context of the cumulative effects of past and ongoing development on the environment and on the exercise of FNNND's rights and interests, failing which the parties may seek further direction from this Court;

- c) A permanent injunction enjoining Yukon Government from undertaking, causing, and/or permitting activities on FNNND Traditional Territory that breach Yukon Government's obligations to FNNND under the Treaty or infringe FNNND's rights under the Treaty;
- d) A permanent injunction enjoining Yukon Government from authorizing any development on FNNND Traditional Territory that is not Sustainable Development;
- e) A mandatory and permanent injunction requiring Yukon Government to amend or replace the components of the Mining Regime over which it has jurisdiction, in collaboration with FNNND and other First Nations, in order to make the Mining Regime consistent with the Treaty's promises and the purposes behind those promises; and
- f) A mandatory and permanent injunction requiring Yukon Government to develop a consultation regime with FNNND in a way that fulfils the Crown's constitutional duty to consult and, if appropriate, accommodate FNNND; and

25. Such further and other relief as this Honourable Court deems just.

The Plaintiff claims as against Canada as follows:

26. A declaration that Canada has breached the Treaty and/or unjustifiably infringed FNNND's rights under the Treaty by failing to manage and protect fish and fish habitats within FNNND Traditional Territory from the effects of placer mining;
27. A declaration that Canada has breached the Treaty and/or unjustifiably infringed FNNND's rights under the Treaty by failing to implement an effective regime capable of protecting fish and fish habitats in such a way that accounts for FNNND's Treaty rights and ensures the continued meaningful exercise of those rights;
28. A declaration that Canada has failed to interpret and implement its legal obligations to FNNND regarding the protection of fish and fish habitat in accordance with the principles flowing from UNDRIP, particularly in a manner that respects the principle of free, prior, and informed consent prior to authorizing activities that result in fish deaths or destruction to fish habitats;
29. A declaration that Canada has breached the duty flowing from the honour of the Crown to take a broad and purposive approach to the interpretation of the Treaty;
30. A declaration that Canada has breached the duty flowing from the honour of the Crown to act in a way that accomplishes the intended purposes of the Treaty;
31. A declaration that Canada has breached the duty flowing from the honour of the Crown to act diligently to fulfil the Treaty promises and the purposes behind those promises;

32. Damages and/or equitable compensation for breach of the Treaty, unjustifiable infringement of FNNND's Treaty rights, and breach of the duties flowing from the honour of the Crown in relation to FNNND's Treaty rights;
33. The following injunctive relief:
 - a) A mandatory and permanent injunction requiring Canada to amend or replace the Watershed Authorizations, in collaboration with FNNND and other First Nations, in order to ensure the placer mining authorization regime is consistent with the Treaty's promises and the purposes behind those promises; and
 - b) A permanent injunction enjoining Canada from authorizing any placer mining on FNNND Traditional Territory that is not consistent with Sustainable Development; and
34. Such further and other relief as this Honourable Court deems just.

The Plaintiff claims as against the Crown, jointly and severally, as follows:

35. Pre-judgment and post judgment interest in accordance with sections 35 and 36 of the *Judicature Act*, RSY 2002, c. 128;
36. Costs of this action on a substantial indemnity basis, plus applicable taxes; and
37. Such further and other relief as this Honourable Court deems just.
38. The Plaintiff proposes that this action be tried in Whitehorse, Yukon.

39. The Plaintiff requests that this Honorable Court exercise its discretion in allowing any matter that would normally be subject to Rule 54 (judicial review) to proceed by way of this action.

Dated: December 9, 2025



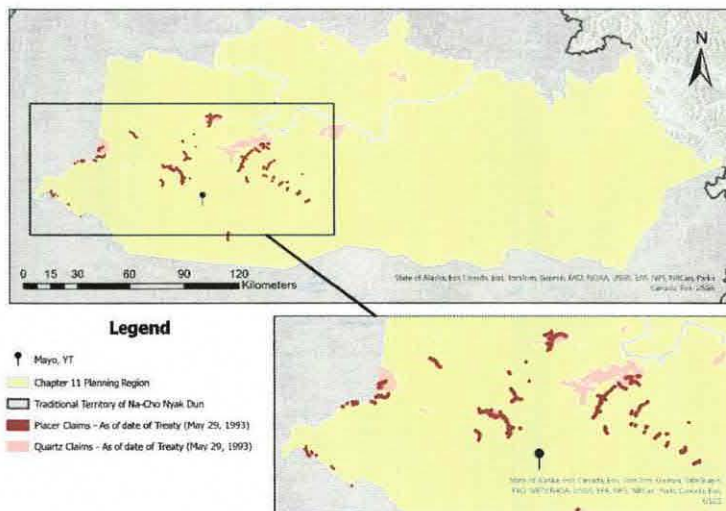
Nuri G. Frame
Counsel for the Plaintiff,
First Nation of Na-Cho Nyäk Dun

Appendix “A”

These maps, which are for illustrative purposes only, reflect the region for which FNNND and Yukon Government agreed to undertake a regional land use planning process pursuant to Chapter 11 of FNNND’s Treaty (as defined in the Statement of Claim). These maps show the mineral activity in this region as of the date that FNNND signed the Treaty (May 29, 1993), as compared to the mineral activity in this region that exists today (December 5, 2025).

For illustrative purposes only.

Mineral Claims in FNNND Land Use Planning Region - 1993



Mineral Claims in FNNND Land Use Planning Region - 2025

